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The New Draft Law Reexamined

Richard V. Levin

Several problems created by the new Selective Service law and the accompanying regulations have only been superficially examined by the commentators. The author, Mr. Levin, isolates a few of the more complex regulations in an attempt to bring order to chaos. To this end, he explores the priority and method of selection within Class I-A, and concludes by examining undergraduate, graduate, occupational, and fatherhood deferments.

THE MILITARY SELECTIVE SERVICE ACT of 1967¹ and the accompanying amendments to the Selective Service regulations² have been the source of much concern and confusion to the nation's prospective draftees. Numerous articles have been written on the subject since the enactment of June 30, 1967, including a most comprehensive exposition which appeared in the January 1968 issue of the *Case Western Reserve Law Review*.³ There remain, however, several aspects of the draft law and regulations which require further clarification.

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I. PRIORITY OF SELECTION WITHIN CLASS I-A

The draft registrant who is placed in Class I-A will not necessarily be drafted. The Selective Service regulations prescribe two separate methods by which the local draft boards are to select men from Class I-A for induction.⁴ One method of selection, which was used exclusively before the recent amendments to the regulations, is employed whenever the Secretary of Defense, in placing a draft call, does not designate an age group⁵ from which the inductees are to be chosen. When the Secretary, acting under the authority given

¹ 1967 U.S. CODE CONG. & AD. NEWS 1342.

² Exec. Order No. 11,360, 32 Fed. Reg. 9787 (1967).

³ Note, *New Draft Law: Its Failures and Future*, 19 CASE W. RES. L. REV. 292 (1968).

⁴ 32 C.F.R. § 1631.7, as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967).

⁵ An age group, within the meaning of the regulations, consists of all registrants born in a given calendar year. *Id.* § 1631.4(c), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

him by the new regulations,⁶ does specify the age group or groups from which the required number of draftees are to be taken, a second method of selection is to be used.

A. Method of Selection: Age Group Not Designated

When a draft call is placed without designation of age group, each local board divides its I-A's into six specific groups.⁷ The men in Group 1 are selected first, those in Group 2 next, and so on, if necessary, through Group 6.⁸

Group 1 contains draft delinquents⁹ who have attained the age of 19. They are drafted in the order of their dates of birth, beginning with the oldest.¹⁰

Registrants who have volunteered for induction¹¹ are placed in Group 2 and are selected in the order in which they volunteered.¹² It should be noted that this group includes only those men who have volunteered through their local boards. The great number of men who enlist in the Armed Forces at enlistment centers are neither included in Group 2 nor counted in filling the local draft quotas.

Group 3, from which the largest number of draftees are taken, consists of nonvolunteers who have reached age 19 but have not reached age 26, and do not have a wife whom they married on or before August 26, 1965 and with whom they maintain a bona fide family relationship in their homes. They are chosen according to age, with oldest first.¹³

Group 4 contains registrants who would otherwise be in Group 3, except that they do have a wife whom they married on or before

⁶ *Id.* § 1631.4(b), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

⁷ *Id.* § 1631.7(a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

⁸ With the exception of delinquents and volunteers, no registrant may be drafted until he has been found acceptable for service in the Armed Forces and has been mailed a Statement of Acceptability at least 21 days before the date fixed for induction, and until the period afforded to take an appeal and the period during which an appeal is pending have ended. *Id.* § 1631.7, as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967); *id.* § 1626.41 (1967).

⁹ No delinquent registrant shall be placed in Class I-A or ordered to report for induction by reason of the delinquency unless the local board has duly declared him to be a delinquent and has not thereafter removed him from delinquency status. *Id.* § 1642.10, as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9794 (1967).

¹⁰ *Id.* § 1631.7(a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

¹¹ Any registrant who has attained the age of 17 but is younger than 26 may volunteer for induction. Volunteers under 18 must have the written consent of their parents or guardian. *Id.* § 1630.1 (1967).

¹² *Id.* § 1631.7(a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

¹³ *Id.*

August 26, 1965 and with whom they maintain a bona fide family relationship in their homes.¹⁴ They too are drafted according to age, beginning with the oldest.

The two groups of lowest priority have been excluded from all draft calls since World War II.¹⁵ Nonvolunteers who have attained the age of 26 are placed in Group 5. If men are ever drafted from this group, they would be selected in the order of their dates of birth, with youngest first. Group 6 is comprised of nonvolunteers who are at least 18½ years old but are under 19. They would be drafted, if at all, according to their ages, with oldest first.¹⁶

The Secretary of Defense may also place separate draft calls for doctors, dentists, veterinarians, osteopaths, optometrists, graduate male nurses, or other specialists when the needs arise.¹⁷ The six-group method of selection is again used,¹⁸ and the men in Group 5 fill a substantial portion of each quota.¹⁹

B. Method of Selection: Age Group Designated

The Secretary of Defense thus far has not exercised his new authority to place draft calls which specify the age group or groups from which to fill the calls. If and when a draft call is placed with designation of age group, the local boards will use a three-group system of selection.²⁰ Many men in Class I-A will not fall into any of the three groups and thus will be excluded from that draft call.

Groups 1 and 2 will again consist of delinquents and volunteers, respectively, with the same age limits and order of selection as under the older system.

¹⁴ The draft status of husbands has been changed several times in recent years. Prior to September 10, 1963, all married I-A's between the ages of 19 and 26 were included in Group 3 with the unmarried men. From September 10, 1963 until August 26, 1965, all 19-to-26-year-old bona fide husbands in Class I-A were placed in Group 4, which was excluded from the monthly draft calls. Since August 26, 1965, the 19-to-26-year-old I-A's married on or before that date have remained in Group 4, but this group has no longer been excluded from the draft. Those married after that date have been placed in Group 3 as if unmarried. See Exec. Order No. 11,119, 3 C.F.R. 783 (1963); Exec. Order No. 11,241, 3 C.F.R. 336-37 (1965); Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967); these orders relate to 32 C.F.R. § 1631.7 (1967).

¹⁵ Interview with Colonel W.L. Klare, Deputy State Director, Ohio Selective Service, Columbus, Ohio, April 18, 1968.

¹⁶ 32 C.F.R. § 1631.7 (a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

¹⁷ *Id.* § 1631.4 (a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

¹⁸ *Id.* § 1631.7 (a), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

¹⁹ Interview, *supra* note 15.

²⁰ 32 C.F.R. § 1631.7 (b), as amended, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967).

In Group 3 will be placed all nonvolunteers in the designated age group, as well as certain registrants whose student deferments have expired and who will be considered as being within the age group called regardless of their actual age.²¹ Married and unmarried men alike will be placed in Group 3 if they fall within the designated age group. Those who are not in the age group called, with the exception of delinquents and volunteers, will be exempt from that draft call.

The men in Group 3 will be chosen for induction according to the month and day of their birth, with oldest first. It is anticipated, however, that they will eventually be selected by some form of national lottery, if Congress approves such a system. The proposal to concentrate each year's draft on the 19-to-20 age group,²² with older age groups to be used only when the prime age group is insufficient to fill the draft calls, is based largely upon the assumption that a lottery system will be instituted.²³

II. DEFERMENTS AND THEIR CONSEQUENCES

A. Undergraduate Student Deferments

The Selective Service Act provides for the deferment of full-time undergraduate students who request such deferment.²⁴ These students are placed in Class II-S, where they may remain until completion of their baccalaureate degree requirements, or failure to pursue satisfactorily a full-time course of instruction, or attainment of age 24, whichever occurs first.²⁵

On several matters pertaining to student deferments, the new

²¹ See text accompanying notes 28-32, 43 *infra*.

²² This group would be a mixture of 19-and-20-year-olds born in the same calendar year.

²³ See PRESIDENTIAL MESSAGE TO CONGRESS ON THE DRAFT, H.R. DOC. NO. 75, 90th Cong., 1st Sess. 7 (1967).

²⁴ § 6(h)(1), 1967 U.S. CODE CONG. & AD. NEWS 1345.

²⁵ 32 C.F.R. § 1622.25, *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790-91 (1967). A student is deemed to be "satisfactorily pursuing a full-time course of instruction" if, at the end of his current academic year, his cumulative number of credits earned toward a degree represents a proportion of the total number required for the degree at least equal to the proportion which the number of academic years completed bears to the normal number of years established by the school for such degree. For example, a student at the end of his third academic year would need to have earned 75 percent of the credits required for a 4-year degree or 60 percent of the credits required for a 5-year degree. A student's academic year runs from September to September if he began his course of study in September, or from June to June if he began in June, and so on. A deferred student is not required to attend school during every semester or quarter of the academic year; he may omit the summer session or any other session, as long as he accumulates the required number of credits by the end of the academic year. See *id.*

law itself accomplishes much less than is generally believed. The Act does not, for example, eliminate the President's discretion to end undergraduate student deferments. It merely provides that such deferments may be substantially restricted or terminated only upon a finding by the President that the needs of the Armed Forces require such action.²⁶ The provision amounts to little more than an expression of the "sense of Congress" that undergraduate student deferments should be continued if at all possible. Similarly, the new law does not, as widely reported, prohibit the use of test scores or class standings as a criterion for deferments. It provides only that no draft board shall be required to grant a deferment solely on the basis of an examination or class standing.²⁷

Under the Act, registrants who are granted Class II-S undergraduate student deferments after June 30, 1967, will be placed in the prime age group²⁸ if and when they are eventually reclassified I-A.²⁹ The regulations require that such registrants be placed in the first prime age group designated by the Secretary of Defense in a draft call for which they are eligible.³⁰ They remain in that age group for purposes of all future draft calls in which any age group is specified, even after their own group is no longer the prime age group. For all draft calls placed without designation of age group, the selection priority of each registrant is determined according to his actual age.³¹ There is nothing in the Act or the regulations which prevents a registrant who has been placed in a prime age group from subsequently being removed from Class I-A upon becoming eligible for a lower classification. For example, such a registrant will be placed in Class V-A upon attainment of age 35.³²

²⁶ § 6(h)(1), 1967 U.S. CODE CONG. & AD. NEWS 1345.

²⁷ § 6(h)(2), 1967 U.S. CODE CONG. & AD. NEWS 1346-47. The current regulations governing undergraduate student deferments are so precise that they leave no room for consideration of test scores, class standings, or any other factors not set forth in the regulations. See 32 C.F.R. § 1622.25, *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790-91 (1967). The regulations relating to graduate student deferments give the local boards more discretion and do not preclude the use of test scores or class standings. See *id.* § 1622.26, Exec. Order No. 11,360, 32 Fed. Reg. 9791 (1967).

²⁸ The prime age group is the designated age group from which selections for induction are first to be made after delinquents and volunteers. See text accompanying notes 20-23 *supra*.

²⁹ § 6(h)(1), 1967 U.S. CODE CONG. & AD. NEWS 1345. The provision does not affect students who later receive other types of deferments or exemptions and thus are never placed in Class I-A.

³⁰ 32 C.F.R. § 1631.7(b), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967).

³¹ *Id.* § 1631.7(a), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9793 (1967).

³² *Id.* § 1622.50(c) (1967).

The Act also provides that registrants who are granted Class II-S undergraduate student deferments after June 30, 1967, shall not be eligible for subsequent Class III-A fatherhood deferments.³³ They remain eligible, however, for deferments by reason of occupation, graduate study, or extreme hardship to dependents.

Undergraduates who are ordered to report for induction while satisfactorily pursuing a full-time course of instruction³⁴ may be deferred in Class I-S until the end of their academic year, unless they have previously received a Class I-S deferment, or have been deferred in Class II-S and have received a baccalaureate degree.³⁵ Undergraduates who receive Class I-S deferments are not thereby ineligible for subsequent fatherhood deferments, but those who remain in Class I-S beyond age 19 will be placed in the prime age group if they are ever reclassified I-A.³⁶

B. Graduate Student Deferments

The 1967 Act does not specifically provide for the deferment of graduate students, but does authorize the President to prescribe regulations for that purpose at his discretion.³⁷ The new regulations provide mandatory deferments in Class II-S for students satisfactorily pursuing graduate study in medicine, dentistry, veterinary medicine, osteopathy, or optometry.³⁸ Class II-S deferments for satisfactory full-time graduate study commencing on or before October 1, 1967 and leading to a degree in other fields may be granted at the discretion of the local boards.³⁹ There is no maximum age limit for graduate student deferments.

Students who, on October 1, 1967, were beyond their first year of uninterrupted study leading to a doctoral or professional degree in a nonmedical field may be deferred for as long as 5 years, inclusive of years already used in such course of study.⁴⁰ No other gradu-

³³ § 6(h)(1), 1967 U.S. CODE CONG. & AD. NEWS 1345.

³⁴ A full-time undergraduate student could be ordered to report for induction if he failed to request a Class II-S deferment or failed to provide his local board with sufficient information, or if he lost his deferment upon attaining age 24. See 32 C.F.R. § 1622.26, *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790-91 (1967).

³⁵ *Id.* § 1622.15(b), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790 (1967).

³⁶ *Id.* § 1631.7(b), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967).

³⁷ § 6(h)(2), 1967 U.S. CODE CONG. & AD. NEWS 1345-46.

³⁸ 32 C.F.R. § 1622.26(a), Exec. Order No. 11,360, 32 Fed. Reg. 9791 (1967).

³⁹ *Id.* § 1622.26(b), Exec. Order No. 11,360, 32 Fed. Reg. 9791 (1967).

⁴⁰ *Id.*

ate students in nonmedical fields may be deferred in Class II-S for more than 1 year, and those who have enrolled or will enroll in graduate school after October 1, 1967 are not eligible for deferment.⁴¹ The Director of the Selective Service System, upon advice of the National Security Council, recently informed the local boards that there will be no change in the announced policy of virtual elimination of graduate student deferments.⁴²

The new law does not require that recipients of graduate student deferments be placed in the prime age group if they are reclassified I-A, nor does it deprive them of eligibility for fatherhood deferments. The regulations, however, apply both of these penalties to graduate and undergraduate students alike, who are granted deferments in Class II-S after June 30, 1967.⁴³

C. Occupational Deferments

For many years, registrants in essential civilian occupations have been deferred in Class II-A.⁴⁴ In granting these deferments, the local boards have been guided by the Department of Labor's lists of critical occupations and essential activities, although many deferments have been given for occupations not on the lists.

It was recently announced by the Director of Selective Service, upon advice of the National Security Council, that the use of these lists has been suspended, leaving each local board with discretion to grant, on an individual basis, occupational deferments based on a showing of essential community need.⁴⁵ Deferments currently in effect will remain valid until their normal expiration dates.

D. Fatherhood Deferments

Those who are ineligible for fatherhood deferments include doctors, dentists, veterinarians, osteopaths, optometrists, graduate male nurses, and registrants who are given Class II-S student deferments after June 30, 1967.⁴⁶ Any registrant who is not in one of

⁴¹ *Id.* Full-time ministry students are an exception since they are eligible for deferment in Class IV-D with no time limit. *Id.* § 1622.43(a) (1967).

⁴² Selective Service System, Operations Bulletin No. 322, February 19, 1968.

⁴³ 32 C.F.R. § 1631.7(b), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9793-94 (1967); *id.* § 1622.30(a), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9791 (1967).

⁴⁴ *Id.* § 1622.22, *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790 (1967). Registrants in essential agricultural occupations are similarly deferred in Class II-C. *Id.* § 1622.24, *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9790 (1967).

⁴⁵ Selective Service System, Operations Bulletin No. 322, February 19, 1968.

⁴⁶ 32 C.F.R. § 1622.30(a), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9791

the excluded categories is entitled to a deferment in Class III-A if he has a child⁴⁷ with whom he maintains a bona fide family relationship in their home.⁴⁸

Even after being ordered to report for induction, a registrant who has not yet been inducted may have his classification reopened and changed to III-A, and his induction order cancelled, if he furnishes his local board with a physician's statement that his wife is pregnant.⁴⁹ The regulations permit such a reopening on the grounds that the registrant's status has been changed by circumstances over which he had no control.⁵⁰

III. CONCLUSION

The brunt of recent changes in the draft law and regulations will be borne by the college students. They will now find it extremely difficult to avoid eventual military service, and only a few will be permitted to pursue graduate study before entering the service. This strict policy toward students is the result of the theory that student deferments are unfair because wealthier young men can more easily attend college.

The consequences of the new policy should become evident in the near future. The military, which prefers younger men, will be forced to accept large numbers of comparatively old inductees. Institutions of higher learning will suffer a shortage of students, teachers, and operating funds. Vital industries and professions will feel the effects in the form of reduced numbers of well-educated personnel. Many children of recent and future college graduates will be forced to do without their fathers for at least 2 years, while most children of high school dropouts enjoy the uninterrupted company of their fathers.

It is submitted that the policy considerations of greatest importance — military requirements, community needs, the advancement

(1967). All registrants, regardless of past deferments or present occupation, are eligible for deferment in Class III-A by reason of extreme hardship to dependents if the appropriate circumstances exist. *Id.* § 1622.30(b) (1967).

⁴⁷ The term "child" includes a legitimate or illegitimate natural child from the date of its conception, a legally adopted child, stepchild, foster child, or a person who is supported in good faith by the registrant in a relationship similar to that of parent and child, but does not include any person 18 years of age or over unless he is physically or mentally handicapped. *Id.* § 1622.30(c)(1) (1967).

⁴⁸ *Id.* § 1622.30(a), *as amended*, Exec. Order No. 11,360, 32 Fed. Reg. 9791 (1967).

⁴⁹ *Id.* § 1622.30(c)(3) (1967).

⁵⁰ *Id.* § 1625.2 (1967).

of higher education, the welfare of dependents, and the overall national interest — have been compromised for the sake of the nebulous and unattainable goal of “fairness.”